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9. Damages (§ 62 (4*))—Party Must Minimize Damages Resulting from Breach of Contract.—Where a party is entitled to the benefit of a contract and can save himself from a loss arising from a breach of it at a trifling expense or with reasonable exertions, it is his duty to do it, and he can charge the delinquent with such damages only as with a reasonable endeavor and expense he could not prevent.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 183.]

Error to Corporation Court of Lynchburg.

Action by the Lynchburg Diamond Ice Factory against the Standard Ice Company, Incorporated. Judgment for plaintiff, and defendant brings error. Reversed.

Kemp & Barksdale, of Lynchburg, for plaintiff in error.

T. J. O'Brien, of Lynchburg, for defendant in error.

CAMP MFG. CO. *v.* GREEN et al.

March 17, 1921.

[106 S. E. 394.]

1. Partition (§ 44*)—Quieting Title (§ 29*)—Where Suit Is to Remove Cloud, and Not for Partition, Doctrine of Laches Is Not Strictly Applicable.—The general rule that laches does not apply to a partition suit by legal title holder within the statutory period, where no title has been acquired by adverse possession by the defendant or his predecessors is not applicable, where complainants' bill is not merely one for partition, where the parties' rights are clear, but shows adverse claims under deeds running through a period of 50 years, and alleges conveyances constituting a cloud on title, and prays that the rights of all parties be adjudicated.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 224, 225.]

2. Quieting Title (§ 1*)—Equitable Doctrine Should Control Disposition of Proceeding to Remove Cloud.—Where the only controversy in a case arises from deeds claimed void and the adverse claims thereunder, and the complainants seek relief by removal of cloud on title which only an equity court could give, equitable doctrines should control.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 512.]

3. Quieting Title (§ 29*)—Laches Applies to Settling Conflicting Titles from Danger of Losing Available Evidence.—Underlying reason for the doctrine of laches as applied to conflicting land titles, in removing clouds, is that because of lapse of time and the death of the parties it is impossible to ascertain all the facts, and therefore it is

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

just to leave the parties in the position in which they have placed themselves.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 517.]

4. Evidence (§ 69*)—Where Actors in Transactions Are Dead, Honesty Rather Than Questionable Motives Will Be Imputed to Them.—In a proceeding to remove cloud from alleged void deed after a lapse of about 50 years, and after the actors in the transactions have died, conduct which would have required explanation from the living will be construed to impute intelligence, honesty, and integrity to deceased, rather than ignorance, fraud, chicanery, and intention to do wrong, and parties must be presumed to have known their rights when making a family settlement:

5. Evidence (§ 66*)—Presumption that Complainants' Ancestor Had Notice of Sale of Land and either Received Payment or Waived Right to Collect.—Where neither complainants, seeking removal of cloud, nor their ancestors, made any claim of title for 52 years, it cannot be assumed, because it could not be specifically proved that an ancestor had notice of the transaction by which her husband sold the land, that she had no such notice; but, in the absence of contrary proof, it must be presumed either that the balance to be paid to the parties entitled thereto from the sale of land by the executor was paid to the parties entitled thereto, or that they have waived their right to collect it.

6. Evidence (§ 236 (5)*)—Heirs Bound by Admission of Party from Whom They Inherit.—In a proceeding to remove cloud on title, consisting of a deed given by an executor, the admission in an affidavit in a chancery suit by one of the heirs that his mother had received her share of the purchase money from the executor is binding upon complainants, wife and children of the affiant.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 348, 349.]

7. Executors and Administrators (§ 149*)—Heirs Barred after 52 Years from Asserting Rights as against Executor's Deed.—Where an executor sold land without authority, heirs held barred from asserting rights which originally existed by the lapse of 50 years, and consequent loss of evidence, acquiescence, and ratification.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 720, 673.]

8. Estoppel (§ 106*)—Executors and Administrators (§ 149*)—Available at Law; Executor's Sale Ratified by Receipt of Proceeds.—Equitable estoppel is available in an action at law as well as in equity, and an executor's sale, though void, is ratified, if, without fraud or mistake, the parties receive the proceeds therefrom.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 282.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Quieting Title (§ 29*)—One Remaining Silent, and Not Protecting Title to Land, Until Evidence Is Destroyed, Is Barred from Relief.—While mere lapse of time or inaction by owner with clear record title without adverse possession will not defeat title, yet unexplained and unreasonable delay, with adverse claims and facts and circumstances brought home to the legal title holder, and his failure to act for such time as to destroy all of the evidence of the original transaction out of which adverse claims arose, will bar relief by removal of cloud after the rights and equities of others have supervened.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 245.]

10. Executors and Administrators (§ 149*)—Heirs Held Not Entitled to Attack Deed of Executor without Accounting for Proceeds of Sale Inherited by Their Ancestors.—Heirs, seeking to overthrow executor's deed given without authority, who are heirs of such executor, so that, if executor did not account to their ancestors, they must have received such proceeds through descent from executor, cannot successfully assert title to the property without accounting for the proceeds of sale.

11. Executors and Administrators (§ 149*)—Heir under Whom Complainants Claim Held to Have Ratified Executor's Sale.—In a deed of executor, who was the husband of their ancestor, facts held to show that such ancestor was not merely silent, but expressly and conclusively ratified the sale and received the benefits, so that heirs are barred.

Appeal from Circuit Court, Brunswick County.

Suit by Joseph B. Green and others against the Camp Manufacturing Company and others. From a decree, the named defendant appeals. Reversed and rendered.

E. P. Buford, of Lawrenceville, for appellant.

E. F. F. Wells, of Norfolk, *B. A. Lewis*, of Lawrenceville, and *Plummer & Bohannon*, of Petersburg, for appellees.

CITY OF CLIFTON FORGE *v.* VIRGINIA
WESTERN POWER CO.

March 17, 1921.

[106 S. E. 400.]

1. Electricity (§ 11*)—Franchise Covering Night Electric Light Service Held Not to Cover Day Service Also.—Where the franchise of an electric light and power company required it only to furnish incandescent lights "at all hours from sunset to sunrise, or as much earlier or as much later as weather conditions make it necessary,"

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.